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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,242	12/01/2003	Paul Rickers	1179-021	1952
20874	7590	05/26/2006	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			BROWN, DREW J	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/725,242	RICKERS, PAUL	
	Examiner	Art Unit	
	Drew J. Brown	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/20/06 (amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abels in view of Ishikawa et al. (U.S. Pat. No. 6,179,304 B1) and Schramm et al.

The combination of Abels and Schramm et al. discloses the claimed invention as discussed above but does not disclose that a rotary pulse generator is arranged in the plane of rotation of the swing axle that sends the signal to reduce the torque when the signal of the rotary pulse generator reaches a predetermined level.

However, Ishikawa et al. does disclose a rotary pulse generator (column 5, lines 15-19). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a rotary pulse generator so the tilting of the vehicle can be monitored and stabilized without having to wait for a contact switch to be actuated.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abels in view of Ishikawa et al. and Schramm et al., and further in view of Claxton (U.S. Pat. No. 5,997,013).

The combination of Abels, Ishikawa et al., and Schramm et al. discloses the claimed invention as discussed above but does not disclose that each driven wheel has a driving motor.

However, Claxton does disclose that each driven wheel has a driving motor (Figure 7 and column 4, lines 19-22). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the combination of Abels in view of the teachings of Claxton to have individual motors for each drive wheel in order to increase the maneuverability of the vehicle by allowing the driven wheels to rotate at different rates.

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4. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abels in view of Ishikawa et al. and Schramm et al, and further in view of Claxton, Wielenga (U.S. Pat. No. 6,065,558), and Knight et al.

The combination of Abels, Ishikawa et al., Schramm et al., and Claxton discloses the claimed invention as discussed above but does not disclose that the truck has a braking device controlled by a brake control device, wherein the signal of at least one switch and rotary pulse generator is provided to the brake control device.

However, Wielenga does disclose a braking device with a brake control that actuates the brakes according to a rollover signal (Abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a braking system to help stabilize the vehicle in order to ensure that the vehicle does not tip in case the drive torque reduction is not sufficient.

Abels does not disclose that a switch is used rather than a sensor. However, Knight et al. discloses the use of a switch (column 2, lines 21-34). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a switch rather than a sensor in order to reduce the cost and complexity of the device while still generating the same signal when using a sensor.

With respect to claim 5, Wielenga discloses that the brake control device can trigger the brakable wheels separately and that the brake control device brakes the outer wheel (Abstract).

Allowable Subject Matter

5. Claim 1 is allowed.

Response to Arguments

6. Applicant's arguments filed 3/20/06 have been fully considered but they are not persuasive.

On page 10, Applicant argues that the Abels reference fails to describe any relation between the swing axle and the body of the truck in terms of a control device that is somehow actuated based upon a predetermined inclination of the truck body to control the drive torque of

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the truck. Also on page 10, Applicant argues that the Schramm et al. reference does not relate to a truck that includes a swing axis or in any way related to the position of the truck body in relation to the swing axis. Finally, Applicant argues that the Ishikawa et al. reference fails to discuss a control mechanism with regard to drive torque of the vehicle based upon tilt of the vehicle.

In response to these arguments, the Examiner maintains that the combination of Abels in view of Ishikawa et al. and Schramm et al. does describe the relation between the swing axle and the body of the truck. While Abels discloses a non-contacting sensor that is used to alert the user when a predetermined distance between the sensor and the body of the swing axle is achieved, Ishikawa et al. discloses another way of sensing when tilting of the axle has exceeded a predetermined value. Because neither reference requires the use of a contact switch, it is submitted that this rotary pulse generator of Ishikawa et al. is analogous art. Also, Schramm et al. is relied upon to teach that the drive torque can be reduced once the predetermined value is exceeded in order to stabilize the vehicle without the use of breaks, since the breaks may not be reliable due to damage or excessive use.

On page 11, Applicant argues that using the Ishikawa et al. reference in combination would not be possible without advance knowledge of the invention. In response to applicant's argument, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew J. Brown whose telephone number is 571-272-1362. The examiner can normally be reached on Monday-Thursday from 8 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Drew J. Brown
Examiner
Art Unit 3616

db
5/24/06

 5/24/06
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